

Communication

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Communication to persons intending to acquire, increase, reduce or transfer a qualifying holding in the capital of a financial institution and to persons owning a qualifying holding¹

Scope:

All natural or legal persons intending to acquire, increase, reduce or transfer a qualifying holding in the following financial institutions (hereinafter collectively referred to as ‘financial institutions’):

- *credit institutions governed by Belgian law*
- *insurance companies governed by Belgian law*
- *reinsurance companies governed by Belgian law*
- *stockbroking firms governed by Belgian law*
- *financial holding companies governed by Belgian law*
- *insurance holding companies governed by Belgian law*
- *mixed financial holding companies governed by Belgian law*

as well as all natural or legal persons that own a qualifying holding in one of these institutions and are subject to ongoing supervision.

Summary/Objectives

This communication transposes into the Belgian prudential framework the joint guidelines of the European supervisory authorities or ESAs (i.e. the European Banking Authority or EBA, the European Insurance and Occupational Pensions Authority or EIOPA and the European Securities and Markets Authority or ESMA) of 5 May 2017 on the prudential assessment of the acquisitions and increases of qualifying holdings in financial sector entities.

From 1 October 2017 onwards, this communication will replace Communication CBFA_2009_31 of 18 November 2009 on acquisitions, increases, reductions and transfers of qualifying holdings in the capital of a financial institution, to which were annexed the joint guidelines published on the same subject in 2008 by the then European supervisory authorities (CEBS, CESR and CEIOPS).

¹ This Communication has been adapted to Communication NBB_2021_19 dated 1 September 2021 - ECB IMAS Portal: digitalisation of forms related to qualifying holdings and the freedom to provide services and the freedom of establishment.

This communication therefore constitutes the new regulatory reference framework for the supervision of the shareholding structure. For any person who has decided to acquire, increase, reduce or transfer a direct or indirect qualifying holding in a financial institution falling under the prudential supervision powers of the national competent authority of Belgium (hereinafter ‘the competent authority’), this communication contains the necessary information to enable him or her to submit the proposed transaction to the supervisor.

This communication also clarifies the rules of procedure and the assessment criteria applied by the competent authority for the purposes of the prudential assessment of the aforementioned transactions.

Legal references

- *Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies: Articles 64 to 73 (insurance or reinsurance companies) and 443 (insurance holding companies and mixed financial holding companies belonging to an insurance group); and*
- *Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms: Articles 46 to 54 (credit institutions), 212 (financial holding companies and mixed financial holding companies belonging to a banking group) and 514 to 518 (stockbroking firms).*

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Dear Sir,
Dear Madam,

From a prudential point of view, it is essential that persons who are likely to influence the management of financial institutions because of their direct or indirect holdings in the capital of such institutions should have the qualities necessary for the supervisor to consider that they will exercise this influence to promote a sound and prudent management of these institutions.

Not only is this prudential requirement a prerequisite for authorisation to be granted, but it continues to apply afterwards, inter alia in the form of the need to perform a prudential assessment of the qualities of natural or legal persons who have decided to acquire or significantly increase a holding in the capital of a financial institution. However, this prudential assessment must be performed in such a way that it does not unduly hinder acquisitions in the financial sector.

This communication transposes into the Belgian prudential framework the joint guidelines published by the European supervisory authorities or ESAs (i.e. the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) on 5 May 2017 on the prudential assessment of the acquisitions and increases of qualifying holdings in financial sector entities. The English version of these joint guidelines is included in its entirety in Annex 8.

This communication will apply from 1 October 2017 onwards (the date on which the joint guidelines of the ESAs enter into force) and will replace Communication CBFA_2009_31 of 18 November 2009 on the same subject starting from that day.

For now, minor adjustments have been made to the forms to be used for notifying a change in the shareholding structure. These forms will be updated more thoroughly in the future in order to take into account the work undertaken to harmonise these forms, particularly within the European Central Bank.

1. Background

On 5 May 2017, the ESAs (EBA, EIOPA and ESMA) published joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in financial sector entities, pursuant to Article 16 of their respective founding regulations.

From 1 October 2017 onwards, these new joint guidelines will replace the joint guidelines published on the same subject in 2008 by the then ESAs (CEBS, CESR and CEIOPS).

The joint guidelines of the ESAs form a comprehensive and elaborate reference document. They serve as a guiding principle for the effective monitoring of acquisitions, increases, reductions and transfers of qualifying holdings in any of the financial institutions governed by Belgian law subject to the supervision of the competent authority, as did the joint guidelines of CEBS, CESR and CEIOPS of 2008.

The joint guidelines of the ESAs are therefore an integral part of this communication and are included in its annexes in the form of a link to the website of the National Bank of Belgium.

2. Definitions

- Supervisor:
 - for insurance and reinsurance companies governed by Belgian law, insurance holding companies governed by Belgian law and mixed financial holding companies belonging to a Belgian insurance group: the National Bank of Belgium;
 - for credit institutions governed by Belgian law, financial holding companies governed by Belgian law and mixed financial holding companies belonging to a Belgian banking group: the European Central Bank (ECB), depending on the divisions of powers laid down in or pursuant to the SSM Regulation with regard to the supervision of credit institutions; and
 - for stockbroking firms governed by Belgian law: the National Bank of Belgium.
- European supervisory authorities (ESAs): (i) the European banking Authority (EBA), (ii) the European Insurance and Occupational Pensions Authority (EIOPA), and (iii) the European Securities and Markets Authority (ESMA).

- Joint guidelines: the joint guidelines of the European supervisory authorities on the prudential assessment of acquisitions and increases of qualifying holdings in financial sector entities, published on 5 May 2017 (included in their entirety in Annex 8 of this communication).
- Qualifying holding: a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights attached to the securities issued by this undertaking or which makes it possible to exercise a significant influence over the management of that undertaking; the voting rights are calculated in accordance with the provisions of the Law of 2 May 2007 on disclosure of major holdings, and of its implementing decrees; no account is taken of voting rights or shares held as a result of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, unless these rights are exercised or otherwise used to intervene in the management of the issuer, provided that these rights are transferred within one year of acquisition (Article 15, 44° of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies; Article 3, 28° of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms).

3. Situations where the competent authority should be notified of a decision to acquire or transfer a holding

a) Acquisition notification that gives rise to a prudential assessment

Pursuant to the aforementioned legal provisions, there is a legal obligation to notify the supervisor of a decision to acquire shares or membership rights in a financial institution, and such notification gives rise to a prudential assessment by the competent authority in cases where, as a result of this acquisition, the acquirer

- will have a 'qualifying holding' in this financial institution, or
- will increase an existing qualifying holding in such a way that the proportion of voting rights or of capital held will reach or cross the thresholds of 20 %, 30 % or 50 %, or that the financial institution will become its subsidiary.

The notification and the prudential assessment to which it gives rise must, by law, take place prior to the actual acquisition of the shares or membership rights.

The legal definition of the concept of 'qualifying holding' is provided above. It should be emphasized that, in light of the criterion of significant influence on management, the acquisition of a holding representing less than 10% of the capital or voting rights may give rise to a notification obligation and to a prudential assessment of the proposed acquisition. For further clarification on the concept of 'significant influence', reference is made to paragraph 5 of the joint guidelines of the ESAs included in Annex 8.

Reference is also made to paragraph 7 of the annexed joint guidelines with regard to the information to be taken into account to assess whether an acquisition decision has been taken and with regard to the involuntary crossing of a threshold.

b) Notification of a transfer of membership rights that constitute a qualifying holding

Legal provisions also require that anyone owning a qualifying holding must notify the competent authority of his or her decision to reduce his or her qualifying holding in such a way that it ceases to be a qualified holding or that the proportion of the voting rights or of the capital held would fall below the thresholds of 20 %, 30 % or 50 % or that the financial institution would cease to be their subsidiary.

Notification is required regardless of the modalities of the transaction in question. In particular, it makes no difference whether the transaction is performed for consideration or gratuitously.

As in the case of an acquisition or increase of a qualifying holding, notification must be made prior to the actual transfer decided on by the shareholder. The transferor must provide the competent authority with the identity of the transferee of the holding. This notification is intended to inform the competent authority of the proposed change in the financial institution's shareholding structure, and to enable it to carry out, where necessary, a prudential assessment of that change.

c) Notification, solely for informational purposes, of acquisitions or transfers of membership rights (5 % threshold)

In addition to the aforementioned obligation to notify the competent authority in view of a prudential assessment of the proposed acquisition, the relevant legislation also requires acquirers of non-qualifying holdings to notify the competent authority of such an acquisition solely for informational purposes, insofar as the proportion of the voting rights or of the capital held would reach or cross the 5 % threshold.

Similarly, anyone holding shares or membership rights in an institution that confer more than 5 % of the voting rights or of the capital but which do not constitute a qualifying holding, is required to notify the competent authority of a transfer of all or part of their shares or membership rights that causes the percentage of capital or of voting rights held to fall below the 5 % threshold.

Unlike the above-mentioned notifications, which give rise to a prudential assessment, purely informational notifications of acquisitions and transfers of membership rights that cause a crossing of the 5 % threshold, need not be made prior to the actual acquisition or transfer. The legal provisions allow for the notification to be made within 10 working days of the acquisition or transfer.

Notifications for informational purposes are intended specifically to provide the competent authority with an up-to-date view of the shareholding structure of financial institutions and to ensure, in cases where holdings of less than 10 % of the capital and of voting rights are being acquired, that these do not constitute 'qualifying holdings' within the meaning of the law.

Where appropriate, if it appears from the competent authority's examination of the capital structure of the financial institution concerned, the acquisition procedures, the shareholders' agreements or any other relevant circumstances, that the acquirer will have a significant influence over the management of the financial institution as a result of this acquisition or because he acts in concert with other people, the competent authority will invite the acquirer to submit all the information necessary to perform the prudential assessment required by law as soon as possible.

d) Acquisition or transfer of an 'indirect' holding

The above-mentioned notification obligations apply to acquisitions and transfers of both direct and indirect holdings.

Reference is made to paragraph 6 and to Annex II of the joint guidelines of the ESAs included in Annex 8 of this communication, which specify which tests should be applied to assess whether an indirect holding can be considered a qualifying holding and which stipulate the size of such a holding (successive application of a control criterion and, if it cannot be ascertained from this criterion that the qualifying holding was acquired indirectly, of a criterion involving the multiplication of the percentages of the participations). These tests differ from the methodology laid down in Communication CBFA_2009_31.

If an indirect holding can be considered a qualifying holding based on the tests specified in paragraph 6 and Annex II of the joint guidelines of the ESAs included in Annex 8 of this communication, the persons who have acquired or transferred this indirect qualifying holding should notify the competent authority.

e) Parties acting in concert

Where several people act in concert, voting rights and shares in the capital held by these persons must be added up to determine whether the thresholds defined by the law have been crossed.

Reference is made to paragraph 4 of the enclosed joint guidelines for the factors to be taken into account to determine whether persons are acting in concert.

f) Principle of proportionality

Paragraph 8 of the joint guidelines included in Annex 8 specifies the implications of the principle of proportionality in the context of the prudential assessment of proposed acquirers, particularly in the case of intra-group transactions or acquisitions by way of a public bid. The principle of proportionality is also applicable for the information to be transmitted to the supervisor. Please refer to this regard to the possibilities of waiver mentioned in the attached forms.

4. Formalities to be completed by the proposed acquirer or transferor

Proposed acquirers or transferors are recommended to contact the supervisor prior to the official notification of their decision to acquire, increase or transfer qualifying holdings in a financial institution. One of the objectives of such informal prior contact is to identify the specific information that the proposed acquirer will need to attach to the notification in order for the dossier to be complete.

a) Official notification to the competent authority

If the competent authority is the ECB, the official notification of the decision to acquire or increase a direct or indirect qualifying holding in a financial institution must always and exclusively be submitted digitally via the ECB IMAS Portal, in accordance with the modalities provided for by the ECB on the webpage of this Portal and on its Authorizations page. As indicated in Communication NBB_2021_19 dated 1 September 2021 - ECB IMAS Portal: digitalisation of forms related to qualifying holdings and the freedom to provide services and the freedom of establishment, in those cases, forms A to C.a are no longer accepted from the moment the digital form is available to the candidate shareholder in the ECB IMAS Portal.

Except in the cases referred to in the first paragraph, the official notification of a decision to acquire, increase, reduce or transfer a direct or indirect qualifying holding in a financial institution, as well as the accompanying information dossier (see below), should be sent by post to the headquarters of the competent authority.

If the competent authority is the National Bank of Belgium, the notification letter should be sent to the following address: **Boulevard de Berlaimont 14, 1000 BRUSSELS.**

In the hypotheses referred to in forms D to F, where the competent authority is the ECB, the notification letter should also be sent to the National Bank of Belgium at the above mentioned address and this last will inform the ECB according to the [SSM Supervisory Manual](#) which is available on the ECB website.

Additionally, In the interest of the efficient handling of the notification, the person submitting it is urged also to submit, at the same time, an electronic copy of the notification and of the entire accompanying information dossier to the following email address: acquirers@nbb.be (except for the cases referred to in the first paragraph).

Furthermore, in order to optimise the handling of the statements that shareholders or proposed acquirers are required to make, the competent authority strongly recommends that they make use of the relevant annexed **form**:

- form A: Statement by **natural persons** for the purpose of the prudential assessment of acquisitions and increases of qualifying holdings;
- form B: Statement by **legal persons** for the purpose of the prudential assessment of acquisitions and increases of qualifying holdings;
- form C: Statement by **trusts or similar legal constructions** for the purpose of the prudential assessment of acquisitions and increases of qualifying holdings, to be complemented by form C.a 'Additional individual statement' for each manager of the trust;
- form D: Statement relating to a **transfer or reduction** of a qualifying holding;
- form E: Statement for informational purposes relating to an acquisition or transfer of securities in a financial institution whereby the **threshold of 5 %** of voting rights or capital is crossed;
- form F: Statement relating to '**new information**' for the purpose of a prudential reassessment of the natural or legal person or trust that owns a qualifying holding the capital of a financial institution.

The notification may be submitted in English, Dutch or French.

It should be noted that, while form F is new, notification forms A through E strongly resemble the forms annexed to Communication CBFA_2009_31 (which were updated slightly).

What is new is that forms A, B, C and C.a for the notification of acquisitions or increases of qualifying holdings must, **from now on, be completed by 'Fit & Proper' dossiers** that are more detailed than the statements requested until now, in order to ensure that these forms are in accordance with paragraph 9 and Annex I of the joint guidelines included in Annex 8 of this communication.

In concrete terms, acquirers that are natural persons, all senior managers (members of the management committee or equivalent members²) of acquirers that are legal persons and all managers of acquirers in the form of trusts or similar legal constructions must provide the supervisor - in addition to the statements regarding reputation included in forms A, B, C and C.a - with a 'Fit & Proper' dossier comprising (i) the answers to the questions of Title "Propriety" of the 'New appointment' form annexed to Circular NBB_2013_02³, (ii) a detailed curriculum vitae, and (iii) a recent extract from the criminal register (or an equivalent document). This 'Fit & Proper' dossier should be delivered systematically as an obligatory annex to the aforementioned forms A, B, C and C.a.

b) Joint statements & notification through a representative

If in accordance with point a), first paragraph, the notification is submitted digitally via the IMAS Portal of the ECB, the following applies only to the extent that this does not conflict with the modalities and instructions determined by the ECB on the same subject.

§.1. Parties acting in concert

In the case of persons acting in concert, the legal notification obligation applies to each of these persons. Nevertheless, the supervisor recommends that these persons authorise one representative to make a single notification, in their name and on their behalf, covering all shares or membership rights involved in the action in concert⁴.

This joint notification should contain the information relating, on the one hand, to the totality of the shares or membership rights that are the subject of the action in concert and, on the other hand, the identification details of each person taking part in the action in concert, as well as the information on the individual holdings of each person involved in the action in concert where these holdings reach or exceed 5 % of the capital and/or voting rights of the financial institution.

If one of these persons also holds, directly or indirectly, shares or membership rights in the same financial institution and can use them freely outside of the action in concert, that person shall submit this information separately and simultaneously to the competent authority, unless the information is already contained in the joint statement by the persons acting in concert.

§.2. Indirect holdings

In the case of indirect holdings, the legal notification obligation applies to each of the entities within the holding chain established on the basis of the tests referred to in paragraph 6 of the joint guidelines of the ESAs included in Annex 8.

However, if the application of the control test reveals a situation where control of an existing holder of a qualifying holding is acquired directly or indirectly, paragraph 6.4 of the aforementioned joint guidelines provides that the existing holder of the qualifying holding is not required to submit a prior notification.

Additionally, all of the individual obligations of the entities within the holding chain may be fulfilled by the action of one of these entities, provided that each entity in the chain in whose name and on whose behalf notification is made to the competent authority is clearly identified. A combined notification of this kind presupposes that each entity in question mandates the entity making the notification to do so in its name and on its behalf.

A combined statement may be made by the highest link in the chain of qualifying and controlling holdings. Joint notification may also be made to the competent authority by the proposed acquirer of a direct holding in the financial institution, on behalf of all the entities that, through this direct holding, will have an indirect holding in the said financial institution.

A combined notification must in any event provide the relevant information on the chain of qualifying and controlling holdings through which a qualifying holding will be held indirectly. This information may be

² This does not include members of the Board of directors or of the equivalent supervisory body.

³ Circular NBB_2013_02 regarding standards on expertise and professional integrity for management committee members, directors, heads of independent control functions and senior managers of financial institutions.

⁴ The possibility to submit joint statements also applies to statements for informational purposes relating to acquisitions or transfers of membership rights whereby the 5 % threshold is crossed.

provided in the form of a diagram indicating the percentage held by each participant as well as the number and type of securities concerned.

It should be remembered as well that, in such a case, the competent authority may consider that the totality of the entities along the chain meet the legal criteria for prudential assessment if they are fulfilled by the entity at the top of the chain and by the entity that owns the direct holding in the financial institution (cf. paragraph 6 of the joint guidelines). Prior contact by the notifier with the competent authority is especially advisable if the former wishes the latter to implement the above procedure.

§ 3. Possibility of notification through a representative

Persons required to make a notification may entrust a representative to make this notification in their name and on their behalf. In that case, the representative will attach to the notification a copy of the mandate given to him by the person(s) in the name of and on behalf of whom he is acting.

5. Assessment by the supervisor

In accordance with the supervisory laws, two different procedures apply to acquisitions and increases of a qualifying holding in a financial institution governed by Belgian law, on the one hand, and transfers on the other: In case of acquisitions or increases, prior authorisation should be requested from the competent authority and, in case of a transfer, prior notification should be submitted to the competent authority.

5.1. Prior authorisation for the acquisition or increase of a qualifying holding

5.1.1 Procedure

In case of an acquisition or increase of a qualifying holding, the proposed acquirer must complete form A, B or C (C.a) and send it to the National Bank of Belgium or fill in the relevant digital form via the IMAS Portal of the ECB .

a) Acknowledgement of receipt for notifications of acquisitions and increases

As soon as the notification and the completed form have been received, the competent authority verifies whether all required information is indeed contained in the notification, before proceeding to an exhaustive analysis of their contents.

If the notification is not complete, the competent authority provides the proposed acquirer with a list of the missing information. If that is the case, the assessment period defined by the legal provisions does not start.

If the competent authority determines that the information dossier accompanying the notification of the decision to acquire or increase a qualifying holding is complete or has been adequately completed, it will acknowledge receipt within **two working days**, in accordance with the legal provisions, and shall mention in this acknowledgement of receipt the date when the assessment period will lapse.

b) Assessment period

The rules regarding the assessment period are defined in the supervisory laws and specified in paragraph 9 of the joint guidelines of the ESAs included in Annex 8.

In short, unless the competent authority has asked the proposed acquirer to provide additional information (cf. below), the assessment period is legally set at **60 working days**, starting on the date of the competent authority's acknowledgement of receipt of the notification. The end of the assessment period thus calculated is mentioned in the competent authority's acknowledgement of receipt of the proposed acquirer's notification (cf. above).

c) Additional information and suspension of the assessment period

The competent authority may at any time in the course of the assessment request in writing that the proposed acquirer submit any additional information that it may judge necessary, in light of the initial information provided, in order to enable it to carry out in a fully informed manner the prudential assessment of the proposed acquisition from the perspective of the prudential criteria stipulated by law.

It should be emphasised that requests for additional information generally concern items not included in the initial list of required information and are generally intended to help achieve a better understanding or a better assessment of the initial information.

It is important that the proposed acquirer promptly provide the additional information requested, in order to avoid an unnecessary extension of the transition period. It should also be emphasized that if the proposed acquirer should fail to provide the additional information requested by the competent authority, the latter may oppose the acquisition inasmuch as the additional information may be necessary to enable it to assess the proposed acquisition in light of the legal assessment criteria.

When the additional information requested is sent to the competent authority, the latter acknowledges receipt and specifies in its acknowledgement of receipt the new date for the end of the assessment period, taking into account the suspensive effect of the request for additional information.

Where the competent authority in application of the relevant legal provisions requests that the proposed acquirer provide additional information, the assessment period is suspended between the date of the request for information by the competent authority and the date when the requested information is received, provided the request for additional information is made **at the latest by the fiftieth working day** of the assessment period.

This suspension period is limited, as a rule, to **20 working days**. However, the competent authority may decide to extend the suspension period to a maximum of **30 working days** if the proposed acquirer is established outside the European Economic Area or if, although established within the European Economic Area, it is not subject to prudential supervision legislation of the financial sector. In that case, the request for additional information made by the competent authority to the proposed acquirer will also mention the decision of the competent authority to extend the suspension period to 30 working days.

It should be noted that the competent authority may make a further request for additional information at a later date, or may make such a request after the fiftieth day of the assessment period. In such a case, however, the requests for additional information do not suspend the assessment period. The competent authority shall only make such subsequent or late requests by way of exception, where the additional information in question seems to it to be indispensable for a correct prudential assessment of the project. It is, therefore, in the proposed acquirer's interest to respond to such requests correctly and diligently.

5.1.2 Assessment criteria

In order to ensure a sound and prudent management of the company, the competent authority performs a prudential assessment of the proposed acquisition from the sole perspective of the following criteria laid down for the said purpose by the legal provisions:

- a) the reputation of the proposed acquirer;
- b) the reputation and experience of any person who will direct the business of the financial institution following the proposed acquisition;
- c) the financial soundness of the proposed acquirer;
- d) the capacity of the financial institution to continue to meet the prudential obligations resulting from its status after the proposed acquisition;
- e) and the absence of any suspicion of money laundering or terrorist financing relating to the acquisition.

The competent authority will therefore refer to paragraphs 10 to 14 of the joint guidelines of the ESAs included in Annex 8 when assessing the persons intending to acquire or increase qualifying holdings in financial institutions governed by Belgian law. These paragraphs provide a common understanding of the precise scope of each of these five prudential criteria.

5.1.3 Decision of the competent authority and appeal

a) Notification of the decision of the competent authority to the proposed acquirer

Where, based on its analysis of the information available, the competent authority decides to oppose the acquisition decided on by the proposed acquirer, it must justify its decision and inform the proposed acquirer thereof within two working days of having taken the decision, and at the latest on the last day of the assessment period, taking into account, where applicable, any suspension of that period.

If the competent authority has not taken such a decision by the end of the assessment period, the proposed acquisition will be deemed to have been approved.

b) Acquisition performed before the competent authority has notified its decision or before the end of the assessment period

Where a proposed acquirer fails to make the requisite prior notification, or if he should perform the proposed acquisition or increase of a qualifying holding despite opposition by the competent authority, legal provisions authorise the latter to initiate legal proceedings before the President of the Commercial Court, acting in summary proceedings, in view of taking any measures provided for in Article 516, § 1, of the Company Code.

These measures may include:

1° formally suspending, for a period of one year at most, the exercise of all or part of the rights attached to the securities in question;

2° suspending, for a period it shall determine, the holding of a general meeting that has already been convened;

3° order the sale, under its supervision, of the securities concerned to a third party not linked to the current shareholder, within a period it shall determine and that is renewable.

Additionally, the competent authority may demand the cancellation of all or part of the decisions of a general meeting held after the date of the acquisition.

Furthermore, attention is drawn to the fact that it is a criminal offence for a proposed acquirer deliberately to fail to submit the legally required notifications or to act in spite of the opposition of the competent authority.

Where circumstances require that the terms and procedures for an agreement between the transferor and the acquirer be set down in writing without waiting for the decision of the competent authority or the end of the assessment period, it is strongly recommended that this agreement be accompanied by a suspensive condition that no objection by the competent authority is issued within the period set down by law.

c) Appeal against a decision by the competent authority to oppose the transaction

If the competent authority is the National Bank of Belgium, in accordance with the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, an appeal may be lodged with the Council of State against authorisation decisions taken by the National Bank of Belgium pursuant to Article 28 of the said Law.

If the competent authority is the European Central Bank, reference is made to the legal framework applicable to it.

5.2. Prior notification in case of a transfer or reduction of a qualifying holding

In case of a transfer or reduction of a qualifying holding, the shareholder should complete form D and send it to the competent authority.

In such a case, prior authorisation from the competent authority is not required. However, the competent authority can verify that this transaction is not in breach of the authorisation conditions.

6. Power of the competent authority to conduct ongoing supervision

In addition to the legal provisions that require the competent authority to conduct a prudential assessment of proposals to acquire, increase or transfer some or all qualifying holdings, the prudential laws also confer upon the competent authority powers it may use, independently of any change in the shareholding structure, in respect of shareholders in financial institutions whom it has reason to believe exert an influence that is liable to compromise the management of the said institutions.

In order to be able to conduct this ongoing supervision of the shareholders, the competent authority should be notified immediately of any new information that could have a material impact on the assessment by the competent authority of the 5 criteria set out in point 2.3 above.

For the notification of this information, the competent authority provides the enclosed standard form F for (direct or indirect) shareholders (that are natural or legal persons) owning a qualifying holding in a financial institution referred to in this communication.

As soon as the competent authority becomes aware of any information that could raise doubts on a shareholder's ability to comply with the criteria included in point 5.1.2 above, it will immediately conduct a closer examination and, if necessary, a new assessment.

If, based on this examination, the supervisor considers that the influence exerted by this shareholder is liable to compromise the sound and prudent management of the financial institution concerned, the supervisor may take the prudential measures provided for in the supervisory laws, namely (i) suspending the exercise of the voting rights attached to the shares held by the shareholder in question, or (ii) ordering the shareholder to transfer the membership rights held by him within a fixed time period.

7. Entry into force

This Communication shall apply from 1 October 2017 onwards (the date on which the joint guidelines of the ESAs enter into force). Communication CBFA_2009_31 of 18 November 2009 on acquisitions, increases, reductions and transfers of qualifying holdings in the capital of financial institutions will be repealed from that date onwards, as are the joint guidelines published in 2008 by the then European supervisory authorities (CEBS, CESR and CEIOPS).

Yours faithfully,

Jan Smets
Governor

Annexes:

- 1) *Form A / Statement by natural persons for the purpose of the prudential assessment of acquisitions and increases of qualifying holdings in the capital of financial institutions*
- 2) *Form B / Statement by legal persons for the purpose of the prudential assessment of acquisitions and increases of qualifying holdings in the capital of financial institutions*
- 3) *Form C / Statement by trusts or similar legal constructions for the purpose of the prudential assessment of acquisitions and increases of qualifying holdings in the capital of financial institutions*
- 4) *Form C.a / Individual statement made in addition to the statement by a trust or similar legal construction for the purpose of the prudential assessment of acquisitions and increases of qualifying holdings in the capital of financial institutions*
- 5) *Form D / Statement relating to a transfer or reduction of a qualifying holding in the capital of a financial institution*
- 6) *Form E / Statement for informational purposes relating to an acquisition or transfer of securities in a financial institution whereby the threshold of 5% of voting rights or capital is crossed*
- 7) *Form F / Statement relating to 'new information' for the purpose of a prudential reassessment of the natural or legal person or trust that owns a qualifying holding the capital of a financial institution*
- 8) *Joint guidelines of the ESAs (EBA, EIOPA and ESMA) on the prudential assessment of acquisitions and increases of qualifying holdings in financial sector entities, published on 5 May 2017*